IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY , THE TENTH DAY OF
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE BILAL NAZKI, THE ACTING CHIEF JUSTICE

And
THE HON'BLE DR JUSTICE G.YETHIRAJULU

Writ Petition Nos.22813 & 23753 of 2004

And

Contempt Case No.101 of 2005

Writ Petition No: 22813 of 2004

Between:

Kolagari Subash Chander, S/o. Athmaram, Occ: Advocate,

R/o. Govindpalle Village, Jagtial Mandal, Karimnagar District.

... PETITIONER

AND

1 The Circle Inspector of Police, Jagtial, Karimnagar District.
2 Shivarathri Mallaiah, S/o. Kondiah,
R/o. Govindapalle Village, Jagtial Mandal, Karimnagar District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.1 in harassing the petitioner and regularly calling the petitioner to the police Station and forcibly taking the Vehicle brand New BAJAJ BOXER and forcibly got executed a

promissory note on 2-11-2004 in favour of the respondent no.2 for a sum of rs.31,000/- in the police station and conducting parallel civil and criminal proceedings in the police station, is arbitrary, illegal, null and void; Consequently direct the respondent No.1 not to harass and not to call the petitioner to the police station and not to make him sit in the police station for hours together and to return the vehicle BAJAJ BOXER brand new to the petitioner and to pass such other order or orders.

Counsel for the Petitioner: MR.K.VENUMADHAV

Counsel for the Respondent No.1: GP FOR HOME

Writ Petition No: 23753 of 2004

Between:

Kolagani Atmaram, S/o. Balaiah,
R/o. of Atmaram Function Place, Sairam Nagar, Jagityala, Karimangar District.

... PETITIONER

AND

1 The Dy. Superintendent of Police, Jagityala, Karimngar District.
2 The Circle Inspector of Police, Jagityala, Karimngar District.
3 The Station House Officer, Jagityala Town Police Station, Jagityala, Karimngar District.
4 The Station Hosue Officer, Jagityala Rural P.S., Jagityala, Karimnar District.
5 Sri Md. Habeeb Khan, Circle Inspector of Police, Jagityala,

Karimnagar District.
6 The Station House Officer, Gollapelli P.S., Jagityala,

Karimnagar District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ, order or direction more particularly one in the nature of writ of Habeas Corpus directing the respondents to produce the detenue /petitioner's son namely Kolagani Subash Chander S/o. Atmaram, 40 years, Occ: Advocate, Jagityala, Karimnagar District forthwith before this Hon'ble Court and to pass such other order or orders in the interest of Justice.

Counsel for the Petitioner: MR.P.PRABHAKAR RAO

Counsel for the Respondent Nos.1 to 4 & 6: THE ADVOCATE

GENERAL

Counsel for the Respondent No.5 : Mr. N.Janardhan Reddy

Contempt Case No: 101 of 2005

Contempt Case filed under Article 215 of the Constitution of India and Section 2 (c) of the Contempt of Courts Act read with Rule 5(a) of the Contempt Rules 1980 read with Sections 10 to 12 of the Contempt of Courts Act to initiate suo motu contempt proceedings against Sri Md. Habeeb Khan, Circle Inspector of Police, Jagityal, Karimnagar District, the fifth respondent in W.P.No.23753 of 2004.

Between:

A.P. State Rep. by Advocate General

... PETITIONER

AND

SRI MD. HABEED KHAN, C.I. of Police,
Jagityala, Karimnagar Dist.

...RESPONDENT

Counsel for the Petitioner: THE ADVOCATE GENERAL

Counsel for the Respondent : Mr. N.Janardhan Reddy

The Court made the following:

JUDGMENT: (per the Hon'ble Dr.Justice G. Yethirajulu)

1. Since all the matters relate to the sole detenu, they are clubbed and this common order is passed.

Writ Petition No.22813 of 2004

2. This writ of mandamus was filed by the petitioner seeking to direct the first respondent—Inspector of Police not to harass him and not to call

him to the police station making to sit for hours together and to further direct return of a Bajaj Boxer motorcycle to the petitioner by declaring the actions of the first respondent as illegal and arbitrary.

3. The petitioner is an Advocate at Jagityal Bar. He pleaded that an agreement between the second respondent and one Buchi Rajam was executed on 2-2-2004 in his presence wherein one Buchi Rajam agreed to send the second respondent to gulf countries on payment of Rs.60,000/- and it was also agreed that in the event of the said Buchi Rajam failing to send the second respondent to gulf countries, he has to return the amount received under the agreement. Subsequently the said Buchi Rajam could not send the second respondent to gulf countries and returned Rs.37,000/- to the second respondent and failed to return the balance amount of Rs.23,000/-. The second respondent instead of demanding the balance amount from Buchi Rajam started demanding Rs.23,000/- from the petitioner by threatening that he would prefer a complaint to the police if he fails to pay the amount. The petitioner has no concern with the payment or refund of the amount.

4. The petitioner further contended that on a complaint given by the second respondent, the first respondent called him to the police station on 28-10-2004, abused him in filthy language and threatened him to pay Rs.30,000/- to the second respondent failing which he would book a false case and put him behind the bars. The first respondent again called him on 2-11-2004 and got a pronote for a sum of Rs.31,000/- executed by him at gun point in favour of the second respondent, as if he is due to pay the amount to the second respondent after detaining him in his office for five hours. On

13-11-2004 also the first respondent forcibly took away his Bajaj Boxer Two Wheeler by informing that unless he pays Rs.1,30,000/-, it will not be returned to him. On 6-12-2004 also the first respondent called him to his office and threatened that if he complains about the happenings to anybody, a case will be booked against him and he would see the end. Since the action of the first respondent is violative of Articles 14, 19 and

21 of the Constitution of India, he is entitled for the relief as prayed for.

5. The first respondent filed a counter-affidavit resisting the application by denying all the allegations made in the writ petition. The first respondent mentioned in the counter-affidavit that as on the date of filing the counter, no complaint was received from the second respondent. The second respondent never approached the Jagityal Police Station to lodge a complaint against the petitioner. The petitioner made bald allegation against the first respondent with an intention to tarnish his image in the public. The second respondent did not approach the first respondent or give any complaint against the petitioner. No case was registered against the petitioner on the file of the first respondent as on the date of filing of the counter-affidavit. The first respondent did not seize any vehicle, more particularly Bajaj Boxer Two Wheeler. The petition is therefore liable to be dismissed.

6. The petitioner though alleged that his Bajaj Boxer motorcycle was taken away by the first respondent, he did not furnish details relating to the vehicle viz., date of purchase, the person from whom it was purchased, date of registration of the vehicle, the registration certificate, if any, and the registration number of the vehicle etc. Though the petitioner chose to file additional affidavit also in these proceedings, the particulars relating to the vehicle were not furnished. In the absence of those particulars, it is not desirable to pass any orders on the basis of vague allegations made by the petitioner and no direction, more particularly in the form of a mandamus, can be given to the first respondent.

7. Since there are allegations about the involvement of the petitioner in Crime No.199 of 2004, the concerned police have every right to secure his presence to the police station for the purpose of interrogation and as the petitioner did not place any material to show whether any ill-treatment was caused to him, the action of the first respondent in calling him to the police cannot be held illegal. No direction that the petitioner shall not be called to the police station can be given unless and until it is established

that he is illegally detained by the police. Since the petitioner failed to furnish the particulars relating to the two wheeler, he is not entitled for any direction as prayed for.

8. In the result, Writ Petition No.22813 of 2004 is dismissed. The petitioner is at liberty to establish his ownership over the motorcycle, the first respondent taking away the vehicle against his consent and seek an appropriate relief before the appropriate forum.

Writ Petition No.23753 of 2004

9. This writ petition was filed by one Atma Ram, the father of the detenu Subhash Chander, seeking to issue a writ of habeas corpus directing the respondents to cause production of his son Subhash Chander (detenu) before the Court since he was detained unlawfully. The father of the detenu in the affidavit filed in support of the writ petition mentioned that on 17-12-2004 at about 8 a.m. the respondents 2 to 6 kept the detenu in illegal custody. He is apprehending that the police are trying to implicate the detenu in a false case as mentioned in the daily newspapers dated 18-12-2004 and 19-12-2004 and subject him to harassment. No crime has been registered and he was not produced before the Court. Therefore, he requested the Court to direct the respondents to produce the detenu and to release him forthwith.

10. The Inspector of Police, Jagityal P.S., who is the fifth respondent in this writ petition, filed a counter-affidavit denying the allegations made by the father of the detenu. In the counter-affidavit the fifth respondent mentioned that Crime No.199 of 2004 was registered on 16-12-2004 on a complaint given by one D. Venkavva in Jagityal Rural P.S. under Section 489 (B) & (C) IPC. During the course of investigation they apprehended one Raji Reddy during the intervening night of 19/20-12-2004 regarding circulation of fake notes and as per the confessional statement given by the said Raji Reddy he secured the fake currency notes from the detenu and one K. Hanumanth Rao. Basing on the said confessional statement, they apprehended the detenu and seven others on 20-12-2004, produced

them before the Judicial First Class Magistrate, Jagityal who were sent to judicial remand and they are in Sub-Jail, Jagityal. The petitioner did not deny the production of the detenu before the concerned Magistrate on 20-12-2004 in connection with Crime No.199 of 2004.

11. In the light of the averments made in the counter-affidavit that the detenu was arrested in connection with a case in Crime No.199 of 2004 and was in judicial custody since 20-12-2004, no directions need be given in this writ petition. The writ petition is accordingly disposed of.

Contempt Case No.101 of 2005

12. This contempt case is a suo motu taken up matter on account of the contemnor giving contradictory versions regarding the arrest of the detenu in two separate counter-affidavits filed in the above writ petitions. W.P.No.22813 of 2004 was filed on 8-12-2004 and the counter-affidavit was filed by the contemnor on 22-12-2004. The relevant portions of the counter-affidavit for the purpose of this case are as under:

> I submit that as on date no complaint has been made against the petitioner by the second respondent herein. I submit that the second respondent never approached the S.I. of Police, Jagityal to lodge a complaint against the petitioner. …. I submit that neither the petitioner nor the second respondent ever approached this respondent and made a complaint. I submit that no case was registered against the petitioner on the file of the first respondent herein as of now.

13. Writ Petition No.23753 of 2004 was filed on 19-12-2004 and the counter-affidavit was filed on 23-12-2004. In the said counter-affidavit the contemnor mentioned as follows:

> It is respectfully submitted that the son of the writ petitioner was arrested in connection with Crime No.199/2004 as he was involved in circulation of fake currency notes and he was shown as accused No.7 in the said crime. It is submitted that the son of the writ petitioner has indulged in circulation of fake currency notes and in fact he was arrested with possession of fake currency to an amount of Rs.1800/- and the same were in fact seized under a cover of panchanama from the son of the writ petitioner. For better appreciation, the Remand Diary dated 20-12-2004 in Crime No.199/2004 which is also being filed herewith and

the same may be read as part and parcel of this affidavit.

14. This Bench during the course of hearing of the writ petitions on 9-2-2005 decided to initiate suo motu contempt proceedings against the fifth respondent—Inspector of police and to issue show cause notice asking him to show cause as to why he should not be punished for contempt of court.

15. After receipt of the notice, the contemnor filed an affidavit on 27-3-2005. In the said affidavit the contemnor mentioned in paragraphs 3, 4 and 6 which read as follows:

> 3. It is submitted that Crime No.199/2004 was registered on 16-12-2004 on the complaint given by one D. Venkavva in Jagityal Rural Police Station under Section 489 (B) and 489 (C) IPC. As per the complaint, it was alleged that she has given an amount of Rs.20,000/- by way of loan to one Beti Raji Reddy about six years prior to giving complaint. It is submitted that by way of returning the said amount to her, he paid Rs.5,000/- through Nakka Bakkaiah on 16-12-2004 towards part payment of the loan advance. On verification she found the said amount of Rs.5,000/- i.e., 50 hundred notes are fake and requested the police to take appropriate action. Accordingly the offence was registered against the said B. Raji Reddy and investigation was undertaken. During the course of investigation, I recorded the statements of various individuals. It is further submitted that we apprehended the said Raji Reddy on the intervening night of 19/20-12-2004 and interrogated him about fake notes. …
>
> 4.It is submitted that the alleged detenu and other accused are involved in counterfeiting the currency and circulating the same as genuine one. It is submitted that the accused 1 to 6 in the said offence have prepared the counterfeit currency of Rs.81,000/- (Rs.100-00 denomination) with the help of computer, printer, scanner and later handed over the same to accused Nos.7 to 11 (accused No.7 is the alleged detenu) for circulation. It is submitted that during the course of investigation we recovered fake notes to the value of Rs.31,000/-.
>
> 6. In reply to paras 2 and 3, it is incorrect to state that the alleged detenu visited the office of the 2nd respondent in connection with settlement of a dispute and it is equally incorrect to state that the motorcycle of the alleged detenu was taken by the 2nd respondent. The entire episode narrated in para 3 is invented for the purpose of writ petition and thereby same is specifically denied. It is incorrect to state that the alleged detenu is under custody on 17-12-2004.

16. He further mentioned in the counter-affidavit that the omission of mentioning the arrest of the petitioner in connection with possession of fake currency notes, and arrest of the petitioner in Crime No.199 of 2004 is not deliberate. It is only on account of the bona fide mistake and impression that the same may not be relevant to answer the allegations leveled against him in W.P.No.22813 of 2004. There was no intention to the contemnor to mislead the court or to suppress the same, but on account of the bona fide mistaken impression that the said fact may not be relevant for the purpose of W.P.No.22813 of 2004 it was not mentioned. The contemnor has always been obedient to law. The contradictory versions noticed by the Court are true, but they are only due to the reasons stated above. This contemnor tenders an unconditional apology to this Court and this Court may be pleased to pardon him and pass appropriate orders.

17. In the additional affidavit the contemnor mentioned that he is offering unconditional apology for the impression he has given to the Court in discharge of his duties and he undertakes and assures the Court that he will not give any scope for such allegation as leveled against him in these writ petitions in future. Hence, requested to pardon him for any mistake or wrongful act on his part and to exonerate him from the contempt proceedings and to pass appropriate orders.

18. In the light of the contradictions noticed in the counter-affidavits filed in the writ petitions and in the light of the submissions made by the contemnor in the affidavits, the point for consideration is:

> Whether the contemnor committed an act of Contempt of Court and whether he is liable for punishment under the Act?

Point:

19. In Writ Petition No.22813 of 2004 the detenu mentioned that on a complaint given by Shivarathri Mallaiah (second respondent) the contemnor called him to the police station, abused him in filthy language

and threatened to pay Rs.30,000/- to the said Shivarathri Mallaiah, failing which he will book a false case against the detenu and put him behind the bars. He also contended that the contemnor forcibly obtained a pro-note for Rs.31,000/- from him at gun point towards the amount due to Shivarathri Mallaiah. He also contended that the contemnor forcibly took away his Bajaj Boxer two-wheeler.

20. In the light of the above allegations made by the detenu, the contemnor filed the counter-affidavit on 22-12-2004 emphasizing that the second respondent therein has not made any complaint against the petitioner. The second respondent never approached the S.I. of Police, Jagityal to lodge a complaint against the petitioner. Neither the petitioner nor the second respondent ever approached him for making any complaint. The contemnor while denying about Shivarathri Mallaiah giving any complaint against the detenu further mentioned that no case was registered against the petitioner on the file of the first respondent. The contemnor did not mention in the above counter-affidavit that the detenu was not arrested in any other crime.

21. In the counter-affidavit filed in Writ Petition No.23753 of 2004 on 23-12-2004, the contemnor gave the particulars regarding the arrest of the detenu and his production before the concerned Magistrate in Crime No.199 of 2004.

22. After perusing both the counter-affidavits and after going through the explanation given by the contemnor in response to the contempt notice, we are of the view that the contemnor mentioned in the earlier counter that no case was registered against the petitioner in response to the allegation made by the detenu that the contemnor called him to the police station on a complaint given by the second respondent Shivarathri Mallaiah. Though the contemnor failed to mention in the first counter-affidavit about the arrest of the detenu in Crime No.199 of 2004, it is not an intentional omission to mislead the Court. The contemnor tendered unconditional apology undertaking not to give any such scope in future proceedings and requested to pardon him for the mistake on his part in

omitting to mention the arrest of the detenu in the counter-affidavit filed in Writ Petition No.22813 of 2004. In the light of the above circumstances, the unconditional apology tendered by the contemnor is accepted and further action is dropped. Accordingly, the contempt petition is closed.

(BILAL NAZKI, ACJ)

(Dr.G. YETHIRAJULU, J)

10th June 2005.

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Deputy Superintendent of Police, Jagityala, Karimngar District.
2 The Circle Inspector of Police, Jagityala, Karimngar District.
3 The Station House Officer, Jagityala Town Police Station, Jagityala, Karimngar District.
4 The Station Hosue Officer, Jagityala Rural P.S., Jagityala, Karimnar District.
5 Sri Md. Habeeb Khan, Circle Inspector of Police, Jagityala,

Karimnagar District.
6 The Station House Officer, Gollapelli P.S., Jagityala,

Karimnagar District.

7 Two C.Cs to the Advocate General, High Court of Andhra Pradesh, Hyderabad.

8 The Government Pleader for Home, High Court

Buildings, Hyderabad.

9 Mr.K. Venumadhav, Advocate (OPUC)

10 Mr.P. Prabhakar Rao, Advocate (OPUC)

11 Shivarathri Mallaiah, S/o. Kondiah,
R/o. Govindapalle Village, Jagityal Mandal, Karimnagar

District (OPUC)

12 2 CD copies.

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